

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TARONTAE D. JACKSON,
Plaintiff,
v.
PERRY RUSSELL,
Defendant.

Case No.: 2:22-cv-01289-JAD-VCF

ORDER

I. DISCUSSION

On November 1, 2022, the Court issued an order screening Plaintiff's first amended complaint ("FAC") under 28 U.S.C. § 1915A. (ECF No. 5.) The Court dismissed the FAC without prejudice and with leave to file a second amended complaint. (*Id.*) Plaintiff has not filed a second amended complaint. However, Plaintiff has filed a motion requesting an application to proceed *in forma pauperis*, and a motion for appointment of counsel. (ECF Nos. 6, 7.) In light of Plaintiff's continued engagement in this case, the Court will grant Plaintiff an extension until February 17, 2023, to file a second amended complaint. If Plaintiff fails to file a second amended complaint by February 17, 2023, this case will be subject to dismissal without prejudice. The court will now consider Plaintiff's motions.

A. ECF No. 6

Plaintiff has filed a motion in which he appears to be requesting an application to proceed *in forma pauperis* for a different case. (ECF No. 6.) To the extent that Plaintiff is requesting something for a different case, he must file a motion in that case, not in this case. Plaintiff has already filed a complete application to proceed *in forma pauperis* in this case.

The motion also appears to request a status updated on Plaintiff's first amended complaint. However, the Court has already accepted and screened Plaintiff's first amended complaint. Accordingly, Plaintiff's motion is denied. However, the Court will

1 direct the Clerk of the Court to resend the Court's previous screening order in case
2 Plaintiff did not receive the screening order.

3 **B. ECF No. 7**

4 Plaintiff has filed a motion for appointment of counsel. (ECF No. 7.) A litigant does
5 not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims.
6 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.
7 § 1915(e)(1), "[t]he court may request an attorney to represent any person unable to
8 afford counsel." However, the court will appoint counsel for indigent civil litigants only in
9 "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983
10 action). "When determining whether 'exceptional circumstances' exist, a court must
11 consider 'the likelihood of success on the merits as well as the ability of the petitioner to
12 articulate his claims *pro se* in light of the complexity of the legal issues involved." *Id.*
13 "Neither of these considerations is dispositive and instead must be viewed together." *Id.*

14 The Court has dismissed Plaintiff's first amended complaint. Because Plaintiff has
15 not yet filed a second amended complaint, the Court cannot properly analyze the
16 likelihood of success or the complexity of the legal issues at play in any potential second
17 amended complaint. Accordingly, the Court will not consider Plaintiff's motion for
18 appointment of counsel until after Plaintiff files a second amended complaint.

19 **II. CONCLUSION**

20 It is therefore ordered that Plaintiff's motion for an application to proceed *in forma*
21 *pauperis*, and for a status update, (ECF No. 6) is DENIED.

22 It is further ordered that the Court will not consider Plaintiff's motion for
23 appointment of counsel (ECF No. 7) until after Plaintiff files a second amended complaint.

24 It is further ordered that the Court extends the deadline for Plaintiff to file any
25 second amended complaint to February 17, 2023. Plaintiff is cautioned that this action
26 will be subject to dismissal without prejudice if Plaintiff fails to timely comply with this
27 order. A dismissal without prejudice allows Plaintiff to refile the case with the Court, under
28 a new case number, when Plaintiff can file a signed complaint.

1 The Clerk of the Court is directed to send Plaintiff the approved form for filing a §
2 1983 complaint, instructions for the same, and a copy of his first amended complaint (ECF
3 No. 3.)

4 DATED THIS 17th day of January 2023.

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8 UNITED STATES MAGISTRATE JUDGE
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